



ISSUE 6

News

December, 2005

1. Purpose of Reclamation Newsletter

This newsletter is intended to facilitate communication to support and enhance the NR 135 program. It will address implementation issues important to maintaining the balance between statewide consistency and appropriate flexibility/discretion. Another function of the newsletter is to fill the on-going need to keep everyone posted on upcoming fee and reporting deadlines, training opportunities, conferences, Nonmetallic Mining Advisory Committee meetings and other announcements. Publication will be on an as needed basis.

2. NR 135 being revised

BACKGROUND:

Chapter NR 135, Wis. Adm. Code, has been in effect since December 2000. As a result of nearly five years of experience gained in administration of the program, the need for refinement of certain procedures and clarification of existing language has become apparent. The department has accepted suggested rule changes from a wide spectrum of stakeholders. The two meetings were much more informal than typical NMAC meetings so as to accommodate the rule-making process and to best access the combined expertise and perspective of attendees. Each meeting was followed by discussions, proposed revisions to rule language that was on the table.

The proposed changes to Chapter NR 135, Wis. Adm. Code, would eliminate some existing rule language and administrative procedures that are no longer necessary.. Also, after more than five years of experience and on the advice of Nonmetallic Mining Advisory Committee (NMAC) some language clarifications and simplification of administrative procedures was deemed necessary. Finally, recent statutory changes mandated changes to Ch. NR 340, Wis. Adm. Code. Act prompted revised language regarding financial assurance to authorize the use of additional forms of financial

assurance. This change will harmonize the NR 340 and NR 135 rules. The following is a list of the more important proposed changes:

a. Remove “start-up” language from the rule

These rule changes will address the above items as well as remove “start-up” language from the rule that is no longer applicable. Numerous provisions were included in the rule to for special permitting and review processes for operations that were active when the rule took effect. These were necessary to allow active mines and new county programs to gradually come into compliance with state law. Such language is no longer necessary or applicable and must be removed.

b. Clarify and simplify through improving fee collection and timing

Fee collection and reporting timing item – revise rule so that fee collection and annual reporting required of operators is less confusing and more efficient. Currently operators pay fees by anticipating unreclaimed acreage in the forthcoming year and provide annual reports based upon the previous year. Proposed language revises NR 135.39 so that there would only be one deadline for both fee submittal **and** for the submittal of the annual report and both are based on unreclaimed acreage in the previous year.

c. Fee increase

Fee increases are proposed in the rule to reflect adjustments for inflation. Mainly, this will affect the DNR portion of fees collected by regulatory authorities and forwarded to the DNR to cover administrative costs. Fees that the DNR would assess if the DNR had to become the regulatory authority would also be adjusted.

d. Dispute Resolution

Currently, DNR can work to assist in the resolution of disputes between operators and regulatory authorities. The process is often inefficient and the outcomes are sometimes vague. In the proposed NR 135.52 the process has been revised to clarify the roles of each party, steps to be taken and corresponding timeframes.

e. Clarify language based on experience

Various minor wording changes to rule language to address very specific issues that have arisen over the past five years and some changes to definitions. One area that has received attention is the safety and stability of slopes that exceed 3:1 after site reclamation. Also, some minor changes to reclamation plan submittal requirements, public hearings, conditional approvals and notes are proposed.

f. Harmonize Financial Assurance with NR 340

The use of additional options that can be employed to satisfy NR 340 financial assurance requirements, as provided in recent statutory changes. The anticipated changes will reflect the statutory changes and will also make the financial assurance provisions of Ch. NR 340, Wis. Adm. Code, more consistent with corresponding provisions of Ch. NR 135, Wis. Adm. Code.

What comes Next?

The staff will request authorization to take the rule to public hearing and open a public comment period on the rule at the Board’s February 22, 2006 meeting. Once authorization is received the proposed rule language will be made available on-line. Public hearings will be scheduled for April of 2006 in Madison and Wausau.

3. Next NMAC Meeting to be Held on May 26, 2006

This is to announce that a Nonmetallic Mining Advisory Committee (NMAC) meeting has been scheduled for **Friday May 26, 2006** at the State Patrol in Deforest. The meeting will begin at 9:30 AM and conclude on or before 4:00 PM. The meeting will be held in the large conference room the State Patrol Headquarters - District 1 Office. How to Get There: The State Patrol office is located about 1/2 mile east of Interstate 90/94 at Exit 126 (County Highway V), approximately 8 miles north of Madison. Additional information or directions may be obtained directly by calling (608) 846-8500. Among the agenda items will be a reporting on the results of public comments on the proposed revisions to NR 135 and discussion of any necessary changes.

4. Training Aid – A Guide to “On-line Resources”

(Note: This material will become available on the website.)

Introduction & Need:

It has become apparent that there is some on-going turnover among county and local staff that are involved in the administration of the Nonmetallic Mining Reclamation (NR 135) Program. This turnover has resulted in an on-going training need. Unfortunately, it is not possible to expend the time and energy on face-to-face training as was done in the early phase of program implementation. Currently, there are travel and budget constraints, as well as the lack of either a predictable or minimum size "audience" of trainees. The good news is that we can use the training tools that are available as efficiently as possible. The training approach addressed here is aimed to maximize the effect of the tools we have. We can utilize these training tools or resources that are available "on-line". Available resources include electronic versions of previously held training and the accompanying handouts as well as various publications that support the nonmetallic mining reclamation program.

Purpose:

The purpose of this training aid is to help people get their "feet on the ground" through the tailored use of on-line resources. When used properly these training resources can provide the needed background for new or reassigned staff. These training resources allow for flexible and inexpensive "on-demand" training to address this on-going but somewhat unpredictable training need. Beyond that this training can be as comprehensive as desired and is available at the pace chosen by the trainee. Lastly, these resources can provide the user with general and specific information, as well as contacts and links for more information. Finally, they have the further advantage of being available for use whenever necessary.

► Overview & background

The overall goal of NR 135 is to provide a framework for statewide regulation of nonmetallic mining reclamation. The rule does this by establishing uniform reclamation standards and setting up reclamation programs to be administered by county and local programs. Such programs are established by ordinance and are based on reclamation permits granted to operators by the county

or local Regulatory Authority (RA). The RA issues reclamation permits in order to ensure compliance with the uniform reclamation standards contained in the rule. Counties are required to adopt ordinances and administer programs and so become the RA, while cities, towns and villages may choose to adopt the ordinance and administer a program within their jurisdiction.

Too often in the past, sites were left unreclaimed, unsafe and unstable. Unreclaimed sites were and are environmental problems often resulting in pollution to surface and groundwater and too often safety hazards. Beyond this they are eyesores that detract from the value of adjacent properties and have a negative impact on the viewsheds that are essential for tourism. Finally, these abandoned unproductive sites or orphan lands imply a loss of tax revenue to local government. The DNR Nonmetallic Mining Website provides a comprehensive overview of the statewide NR 135 reclamation program. Please see this introduction to site and program to get a sense of how it all fits together.

<http://dnr.wi.gov/org/aw/wm/mining/nonmetallic/>

<http://dnr.wi.gov/org/aw/wm/publications/mining/WA-828-00.pdf>

Legal basis for nonmetallic mining reclamation program.

State Statute, s. 295 required that the DNR to write administrative rules, ch. NR 135, Wis. Admin. Code, that create uniform reclamation standards for reclamation and lay out the basis for county and local programs. These nonmetallic mining reclamation programs are mandatory for counties and voluntary for cities, villages and towns. By law, such reclamation programs are administered by a county or local regulatory authority and are authorized by the passage of an ordinance that complies with NR 135. To view applicable statute and administrative rules and model ordinances please see the following:

<http://dnr.wi.gov/org/aw/wm/mining/nonmetallic/regulations.htm>. Model ordinances were provided on-line at: <http://dnr.wi.gov/org/aw/wm/mining/nonmetallic/modordin.htm>.

Role of the County or Local Regulatory Authority (RA)

The county or municipal entity administering a nonmetallic mining reclamation program will review reclamation plans, issue reclamation permits and conduct site inspections. To cover the cost of these the RA collects fees to cover their costs. Counties may set and collect fees within the scope of the rule but these fees must represent, as closely as possible, their actual administrative costs.

DNR Role

The DNR was responsible for writing the NR 135 rule as mandated by state statute. The DNR continues to provide technical assistance and training. In addition, the Department must perform program quality assurance audits to ensure that county and local ordinances are being fully and uniformly enforced in compliance with state law.

► General training on Reclamation Plans, permits and financial assurance

Reclamation Permits are the key permit issued by a county or local reclamation program. All active nonmetallic mines in the state must have a reclamation permit in order to mine. Although the focus of a reclamation permit is on reclamation - nevertheless no mining can occur absent the

reclamation permit. The *reclamation permit* is based on a reclamation plan. The *reclamation plan* is like a "blueprint" for a home but the target is the approved post-mining land use.

A publication addressing the reclamation plan is available on-line at <http://dnr.wi.gov/org/aw/wm/publications/mining/NonmetRecPlan.pdf>. Once the details of reclamation are worked out a *financial assurance* must be provided to guarantee that the work is completed in the case of a problem. A publication addressing the *financial assurance* is available "on-line" at <http://dnr.wi.gov/org/aw/wm/publications/mining/NonmetFinAssure.pdf>. (see *handouts from a training videoconference* held in March 2003.) <http://dnr.wi.gov/org/aw/wm/publications/mining/VideoConfHandout.pdf>

► Key Elements

Fees and Annual Reports

The legislature decided that the program was not to be funded on taxes. Instead, a fee on the industry that covered the administrative costs associated with the program. Fees pay for county and local RA and the DNR costs. Since, as mentioned above, part of the DNR role has to do with monitoring and the annual reports are important in that regard.

<http://dnr.wi.gov/org/aw/wm/publications/mining/wa-832-01.pdf> To address concerns regarding the fairness and accuracy of fees the DNR was required by rule to report to the DNR Board. For more information on this please see the following: <http://dnr.wi.gov/org/aw/wm/publications/mining/nrbrept91903.pdf>.

Performance audits and quality assurance for the State-wide NR 135 Program

The Department is required by law to provide oversight and conduct performance audits of jurisdictions administering nonmetallic mining reclamation programs under NR 135. The purpose is to ensure quality control through regular audits. It is important that a "level playing field" be maintained. A critical function of the audit is so that DNR can assure that reclamation in the field is performed in compliance with the uniform reclamation standards set forth in NR 135 and that program implementation across the state remain in compliance with the NR 135 rule. Useful information on how to prepare for an audit is contained in an article "*How to Prepare for a Nonmetallic Mining Program Reclamation Audit*" that is available in the Mining Reclamation Newsletter Issue #5. <http://dnr.wi.gov/org/aw/wm/mining/nonmetallic/newsletter/news5.pdf>

What is the Nonmetallic Mining Advisory Committee (NMAC) or "Advisory Committee"?

The Nonmetallic Mining Advisory Committee was established by administrative rule, Chapter NR 135, to advise the DNR in administering the statewide nonmetallic mining reclamation program. <http://dnr.wi.gov/org/aw/wm/mining/nonmetallic/nmac.htm> In general, the Committee serves as a conduit for input from interested business groups and the public. Their involvement is especially important when rule revisions are being made. Meetings must be scheduled at least annually. Collectively, the Committee should represent the interests of a wide spectrum of stakeholders across the state. Members are appointed by the Secretary of the Department for terms not exceeding three years. You may use the above link to directly contact NMAC members by email or obtain their phone numbers or mailing addresses.

What is registration and why is it important?

The registration of the land containing a nonmetallic mineral deposit may be registered with the county and thus receive some benefit when it comes to local zoning. Registration is intended to encourage the identification, preservation and planning for ultimate development of marketable deposits. Registration of deposits also prevents future land uses such as the erection of permanent structures that would interfere with future mining of the deposit. For more information on registration please see: <http://dnr.wi.gov/org/aw/wm/publications/mining/WA-825-00.pdf>.

► Relationship to other programs

Stormwater, General Permits NR 216,
<http://dnr.wi.gov/org/water/permits/nmm.htm>

Nonmetallic Mining Operations GP WI-0046515-4

This general permit authorizes the discharge of both storm water and process waters from sand, gravel, dimension stone, rotten granite, clay pit, and crushed stone operations where storm water, wash water, pit dewatering, dust control and non-contact cooling wastewaters are discharged to surface waters or seepage systems. Both active and inactive nonmetallic mines are required to have coverage under this permit unless conditions warrant coverage under an individual (site-specific) permit.

For a list of stormwater permittees please see:
<http://dnr.wi.gov/org/water/wm/nps/stormwater/permits/Industrial.pdf>

Navigable waterways: permits for dredging and similar activities in or adjacent to navigable waters are regulated under chapter 30 of Wisconsin Statutes. Chapter NR 340, Wis. Adm. Code, was developed to establish criteria and standards to regulate nonmetallic mining that takes place in or adjacent to navigable waters. NR 340 can be viewed at:
<http://dnr.wi.gov/org/water/fhp/handbook/PDFs/ch105.pdf>

nonmetallic mining and waterway permit application
<http://dnr.wi.gov/org/water/fhp/waterway/nonmetallicmining.shtml>
<http://dnr.wi.gov/org/water/permits/nmm.htm>
<http://dnr.wi.gov/org/water/wm/ww/gpindex/46515summ.doc>
<http://dnr.wi.gov/org/water/wm/ww/gpindex/46515fs.doc>

Air Program

DNR uses the 1998 Nonmetallic Mining Agreement
http://dnr.wi.gov/org/aw/air/emission/NR438/nonmetallic_mining.htm
The DNR also uses this agreement to calculate air emissions from existing and new crushers and for calculating emissions for equipment that is used in other source categories. For example, conveyors are not only used by crushing spreads but also hot mix asphalt plants.

- **Local Zoning,**

► **Where to get more training information:**

A **training handout and a video** of a March 2003 videoconference training is available for you use at:

<http://dnr.wi.gov/org/aw/wm/publications/mining/VideoConfHandout.pdf>

DNR Regional Contacts:

DNR contacts are available to provide assistance and answer questions. They can be found at:

<http://dnr.wi.gov/org/aw/wm/mining/nonmetallic/staff.htm>

Publications:

<http://dnr.wi.gov/org/aw/wm/publications/index.html#mining>

Mining Reclamation Newsletter:

<http://dnr.wi.gov/org/aw/wm/mining/nonmetallic/newsletter.htm>

Frequently Asked Questions:

<http://dnr.wi.gov/org/aw/wm/faq/index.htm#nonmetallic>

5. Announcements/ "Heads-up" - *Important Dates:*

- Annual Reclamation Fees due to RAs **December 31, 2005**
- Annual Reports due to RA on **March 1, 2006**
- Annual Reclamation Fees due to DNR **March 31, 2006**
- Public hearings on Proposed revisions to NR 135 – **April, 2006**
- NMAC meeting to be held on **May 26, 2006.**
- Annual Reports from RA to DNR due to **May 31, 2006**
- Program Review Audits to be scheduled

6. More Information:

Part of the Department's mandate is to provide technical assistance to support the county and municipal nonmetallic mining reclamation programs, and to address the needs of mine operators. Informational materials can be found at the Department's Nonmetallic Mining Web site, and are described in detail below:

<http://www.dnr.state.wi.us/org/aw/wm/mining/nonmetallic/index.htm>.

7. **Suggestion Box:** We welcome your ideas, questions and involvement. Please submit ideas topics for articles, issues you would like to see addressed, regular features that ought to be in the newsletter, announcements of any meetings you'd about which you'd like to notify the NR 135 population. Responses can be emailed to Tom Portle (email: Thomas.Portle@dnr.state.wi.us).



Reclaimed Flambeau Mine Site in Ladysmith. Site awaits certification of completed reclamation.
Photo by Tom Portle